

SOUTHEND FARM, SOUTHEND LANE, SOBERTON, HAMPSHIRE SO32 3QB

Appeal ref: APP/L1765/C/20/3256531

Land North of Dradfield Lane, Dradfield Lane, Soberton, Hampshire SO32 3QD

Planning Authority: Winchester City Council (WCC)

REPRESENTATIONS ON PLANNING APPEAL

1. These representations are from Angus and Sarah McCullough. We live on a neighbouring property to the site that is the subject of this appeal. Our address is at the head of this document.
2. We respectfully contend that the appeal should be dismissed. None of the grounds advanced is sustainable.
3. Although our property is not adjacent to the appeal site, the development is highly visible from our land – as well as other parts of the open countryside at the boundary of the South Downs National Park. The Inspector is invited to visit our property if the visual impact on the landscape is considered to be an issue relevant to the appeal.
4. There is a concern at the lack of notification by WCC of potentially interested members of the public. Over 45 objections were submitted in relation to the retrospective planning permission application in relation to this site (referred to below: **20/01508/FUL**). We were not sent the appeal notification letter, but learnt about it indirectly. This is despite having corresponded extensively with WCC over the months since May 2020, and having submitted detailed comments by way of objection to the planning application. We should clearly have been considered interested parties. As far as I am aware (but without comprehensive knowledge of the position) no other objectors have received the notification letter.
5. The following is summary of the background to the appeal site based on the available documents:

Early May 2020 Appellant acquires the site as a free-standing holding (see social media posts annexed below)

- May 2020 Removal of 14 metres of protected hedgerow, recognised by the planning authority as “important” (due to it being a breeding site of a protected species¹) within the meaning of the Hedgerows Regulations 1997, with creation of enlarged solid gates over 2 metres high, side panels, and a concrete apron, as well as internal hardstanding. These gates replaced a standard agricultural 3-4 metre field gate.
- 21.5.20 WCC notified of illegal hedgerow destruction: see Appendix 1 below.
- 27.5.20 Service of a Temporary Stop Notice (after siting of lorry trailer earlier that day, with the industrial container being deposited the next day: see WCC site visit reports submitted in their costs rebuttal)
- 17.6.20 Service of Enforcement Notice
- 17.7.20 Application for retrospective planning permission (20/01508/FUL) in relation to the enlarged gateway, hardstanding, and pipework
- 23.7.20 Appeal Notice, appealing against Enforcement Notice
- 24.7.20 Date at which Enforcement Notice would have taken effect, but for appeal
- 11.9.20 Decision (20/01508/FUL): retrospective planning permission refused

6. The appeal has been advanced on the following grounds, each of which is addressed below:

- (b) *That the breach of control alleged in the enforcement notice has not occurred as a matter of fact*
- (c) *That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").*

¹ See WCC Officer's Report on Application 20/01508/FUL

- (f) *The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.*
- (g) *The time given to comply with the notice is too short.*

(b) Breach of control as a matter of fact

7. The Appellant contends that (i) there has been no material change of use; and (ii) there has been no 'development' within the meaning of section 55. Neither contention is sustainable.
8. The Enforcement Notice identifies "the storage / parking of trailer unit(s) [etc.] ... not associated with the lawful use of the Land for agriculture" and "the construction of a hardstanding and drainage runs / pipes associated with the material change of use of the Land."
9. The parking and storage of the trailer on site was, by the Appellant's own previous assertions, for the purposes of him to convert for his own residential use.
 - This was expressly stated to the planning officers on their visit on 27 May 2020 (lodged on the appeal by WCC as part of its costs rebuttal): extract below.

During the site visit Mr Butler advised the following:

1. **His clear intention to live on the site. He had purchased this land to live on. He would be converting the trailer for residential occupation. He showed Richard Botham and I a photograph (from his mobile phone) of a converted trailer, which was timber clad, with window and door openings and advised that was what he intended to do with the trailer that had been delivered to site.**

I advised Mr Butler that the site was situated in the countryside and residential use would be contrary to Local Plan policy (MTRA4). Mr Butler said that he was of no fixed abode and would in 3 weeks be homeless and he would live at the site. I advised Mr Butler that if it was his intention to live at the site he would require planning consent and should submit a planning application. I explained that if the Council did refused planning permission, he would have a right of appeal and could pursue the matter through the application route available.

- It has also been repeatedly publicly stated on the Appellant's social media postings: see annexed extracts (which are merely a few examples of many posts to similar effect).

10. The Appellant's assertion in the appeal form that there has been no material change of use is unsustainable. The contention now advanced in the Appeal Notice that **the trailer** "is used for the storage of hay" cannot be regarded as plausible or genuine.
- The trailer would be inherently unsuitable for the storage of hay due to lack of ventilation.
 - Any hay that may at present be being stored there (which is not known) does not reflect its genuine purpose, given the Appellant's previously stated intentions and the nature of the associated development works performed by him on the site (see below).
 - No hay crop has been taken from the site by the Appellant. The vegetation, which includes extensive rush (*Juncus* spp.) growth makes it unsuitable for good quality hay. The only sustainable use of the land for agriculture would be limited seasonal grazing, given that the land is waterlogged and flooded through the winter. The pig enclosure is already (in October) entirely saturated, with standing water remaining over it after any significant rain.
 - Hay is not a suitable feed for pigs (6 of which which have been subsequently introduced onto the site in mid-July) and are the only livestock on the land.
11. Similarly, the large area of **hardstanding** that has been created has no plausible agricultural use. It is far more extensive than would be required for the siting of the trailer and container: see photographs. The contention in the appeal notice is that the hardstanding is not development and/or is permitted (which is incorrect, as explained under (c) below). No specific agricultural purpose other than providing a "mud free surface" is suggested², nor could it be in the context of any potential agricultural use of this site. The Appellant described his intention to build a car park in his social media posting at the time he acquired the site: see extract below: "just measuring up for the car park and entrance".
12. Further evidence that the trailer and hardstanding are not for an agricultural purpose is provided by the Appellant's subsequent works, since service of the Enforcement Notice. These include:
- not just stock fencing which has been erected, but an additional line of 2 metre panel fencing that is currently being constructed between the stock fencing and the hedge.
 - the laying of a mains water pipe down the length of the field, with standpipes at intervals down its length.

² Under Ground (c) there is also reference to providing "a surface area for agricultural vehicles to enter and leave the site in a forward gear". Any agricultural vehicle entering and leaving would not require a hard surface to do so, and this rationale is not credible. Ground (f) similarly implausibly refers to "the hardcore surface to allow the parking and turning of agricultural vehicles ... that ... prevents the deposit of mud from the site onto the highway".

13. The works set out in the Enforcement Notice therefore clearly constitute a breach of planning control - both as a material change of use and non-permitted development.

(c) No breach of planning control

14. The Appellant contends that the works constitute permitted development. That assertion only appears to be made in relation to the hardstanding and drainage pipes, not the parking and storage of the trailer / container.

15. The Appeal Notice cites the provisions of the 2015 Order³, Sch.2, Part 6, Class B. These provisions only relate to development “on agricultural land comprised in an agricultural unit”. The permitted development provisions cannot apply to development which is not related to any agricultural use of the land. The lorry trailer and hardstanding are not part of or “comprised in an agricultural unit”. In any event, there is no permitted development provision that would allow the storage and parking of the trailer unit. If the hardstanding and pipework are not related any genuine agricultural use, they cannot constitute permitted development within Class B.

16. It is noted that B1 provides that development is not permitted under Class B of the Order if “(b) the external appearance of the premises would be materially affected”. On any view the siting of the lorry trailer unit materially affects the external appearance of the premises. Even if that fell within Class B (which it does not, as set out above), it would be excluded by B1(a).

17. The Permitted Development provisions do not relate to the lorry trailer or industrial container. In relation to those items the Appeal Notice merely repeats the assertion that these are “associated with agricultural use”. As set out above, that is not consistent with the Appellant’s own previously declared intentions at the time they were brought onto the site: see above.

(f) Excessive steps required

18. The steps required cannot be regarded as excessive, contrary to the Appellant’s contention. The Council has produced clear evidence that it actively engaged with the Appellant, who expressly confirmed his intention (that he had also expressed to locals and on social media) that he intended to use the site for the siting of converted residential trailers. In these circumstances, it was entirely reasonable

³ Town and Country Planning (General Permitted Development) (England) Order 2015/596, Sch 2, Part 6, Class B.

for the trailer that had been brought onto the site, and the works ancillary to that non-agricultural purpose, to be required to be removed.

19. The Enforcement Notice entirely correctly states that “the development is harmful to the character and appearance of this countryside location”. The Appellant does not appear to dispute that. Indeed, his social media posting (see below) expressly accepts that “This looks ugly, I agree ...” in relation to a picture of the lorry trailer on the hardstanding: see below. He now apparently disavows his previously stated intention to convert it into a residential unit (suggested to have a more acceptable appearance, with wood cladding and windows). As set out above, that disavowal is not credible, when considered in the context of his previous clear statements and the associated works that are not consistent with an agricultural use of the land (see above).

(g) Insufficient time to comply

20. The Enforcement Notice served on 19 June 2020 followed service of a Temporary Stop Notice served on 27 May 2020. The Enforcement Notice was provided to take effect on 24 July 2020, with a time for compliance of 3 months thereafter (so 24 October 2020). That constituted ample time for compliance. Removal of the lorry trailer unit and industrial container would be a straightforward operation. The other works required would be more extensive, but the time allowed was reasonable and more than sufficient. That may be seen in the context of the speed with which the works were performed. The Appellant only obtained ownership of the Land in early May 2020, according to his social media posts – see below. To give 3 months (following the 1 month before the Enforcement Notice was to take effect) was generous, in relation to works that had been performed in less than 7 weeks from acquisition of the site.

Thank you for considering these representations.



Angus and Sarah McCullough

Appendix 1: Email to WCC re Hedgerow Destruction

FW: Planning application 20/00117/FUL



Angus McCullough QC

To: 'planning@WINCHESTER.GOV.UK'

Cc: 'Victoria Weston (Cllr)'; 'dtownsend@winchester.gov.uk'; 'jpinnock@winchester.gov.uk'; 'jemima.phillips@hants.gov.uk'

Reply

Reply All

Forward



Thu 21/05/2020 09:14

Dear Sir / Madam

Councillor Weston (copied) kindly forwarded to me a copy of her email in relation to this site (Land off Dradfield Lane), in which she raises important and urgent concerns about the works that are now ongoing despite the withdrawal of the planning application 20/00117/FUL.

An additional factor which is perhaps the most immediate concern is that the hedgerow destruction which has already taken place appears to be an offence under regulation 7 of the Hedgerows Regulations 1997. Part of the hedgerow has been destroyed in order to widen the gate entrance substantially, as also noted by Councillor Weston. That specific hedge is one in which I have found Brown Hairstreak butterflies (*Thecla betulae*) breeding, which is officially recorded, and there is no doubt that it's an 'important hedgerow' (also for reasons as well as the butterflies). There will be larvae of this protected butterfly in the hedge at the present time of year. Furthermore, removal of the hedgerow at this time of year is almost certainly an offence under the Wildlife and Countryside Act 1981 as we are in the middle of the nesting season, as it is very likely that there will have been birds nesting in the hedgerow.

I would be grateful if urgent enforcement action could be considered on this basis, as well as in relation to the concerns raised by Councillor Weston.

Please do not hesitate to contact me if I can provide any further information.

Angus McCullough

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Appendix 2: Selection of the Appellant's social media postings on Instagram (@netnog25)

Instagram post: 2 May 2020



The screenshot shows an Instagram post from the user netnog25. The main image is a video of a lush green field with a line of trees in the background under a cloudy sky. A large white play button is centered over the video. To the right of the video is the user's profile information: a circular profile picture, the name 'netnog25' with a 'Follow' button, and the location 'Soberton'. Below this is the caption: 'Hopefully by next Friday I'll own this patch of grass to live on and do my tiny houses!! 🤪. Just measuring up for the car park and entrance. Going to have ducks, chickens and an 1866 Winchester Rifle to pop trespassers!! 🤪'. The caption is followed by '3w'. Below the caption is a reply from user 'thomas_wellburn_jewellery' with the text 'Mate that's gonna be awesome!' and a heart icon. The reply is dated '3w' and has '1 like' and a 'Reply' button. Below the reply is a 'Hide replies' option. At the bottom of the post, there are icons for likes, comments, shares, and a bookmark. The text '4 likes' and 'MAY 2' is displayed. At the very bottom, there is a text input field 'Add a comment...' and a 'Post' button.

netnog25 • Follow
Soberton

netnog25 Hopefully by next Friday I'll own this patch of grass to live on and do my tiny houses!! 🤪. Just measuring up for the car park and entrance. Going to have ducks, chickens and an 1866 Winchester Rifle to pop trespassers!! 🤪

3w

thomas_wellburn_jewellery Mate that's gonna be awesome!

3w 1 like Reply

— Hide replies

netnog25
@thomas_wellburn_jewel

4 likes
MAY 2

Add a comment... Post

netnog25 8h

This looks ugly, I agree. But it will be converted into...



Send message

netnog25 8h

This in 6-8 months



Send message